



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

JUL 19 2006

Kirk Adams, Treasurer
Arizona Republican Party
P.O. Box 2768
Yuma, AZ 85366

RE: MUR 5588

Dear Mr. Adams:

On November 4, 2004, the Federal Election Commission notified the Arizona Republican Party ("Committee") and Dennis Booth, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to the Committee at that time.

Upon further review of the allegations contained in the complaint, information provided by the Committee, and publicly available information, the Commission, on June 6, 2006, found that there is reason to believe the Committee and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 434(b)(4)(H) and 434(g)(1)(A), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

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demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Wanda Brown, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Robert D. Lenhard
Vice Chairman

Enclosures

Factual and Legal Analysis
Designation of Counsel Form

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4
5 **RESPONDENTS:** Arizona Republican Party **MUR: 5588**
6 and Kirk Adams,
7 in his official capacity as treasurer¹
8

9 **I. INTRODUCTION**

10 This matter involves violations of reporting requirements for an independent expenditure
11 by the Arizona Republican Party on behalf of President George W. Bush and Bush-Cheney '04.

12 The Complainant alleges that the Arizona Republican Party (the "ARP") funded
13 "thousands" of pre-recorded telephone calls expressly advocating the re-election of President
14 George W. Bush. These calls were placed on or about October 22, 2004. The following is a
15 transcript of the telephone message:

16 Hello. This is Bob Fannin, Chairman of the Arizona Republican Party. I'm
17 calling to remind you to mail in your early ballot. President Bush continues
18 to offer a plan for a safer world and a more hopeful America. On the other
19 hand, the Democrats and their allies have shown that they will stop at nothing
20 to try to steal this year's election. Our signs have been vandalized and stolen,
21 our offices broken into, and just today, one of our Arizona Republican
22 County Headquarters received a bomb threat. Help us to put a stop to this
23 type of politics by returning your early ballot today. Your vote matters.
24 With your support, we are confident that President George W. Bush and our
25 Republican team will be re-elected. This call was paid for by the Arizona
26 Republican Party. Not authorized by any candidate or candidate's
27 committee. On the web at www.azgop.org.
28

29 The Complainant alleges that funding for the telephone calls qualifies as either a
30 contribution to or an independent expenditure on behalf of Bush-Cheney '04. Complainant also
31 requests an investigation to determine whether Federal funds were utilized to finance the

¹ A previous treasurer, Dennis Booth, was notified in his official capacity as treasurer at the time of the complaint. On March 13, 2006, the Arizona Republican Party amended its Statement of Organization naming Kirk Adams as treasurer.

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1 telephone calls, and whether the ARP properly and timely reported these disbursements as
2 required by the Federal Election Campaign Act of 1971, as amended ("the Act").

3 The ARP answered a portion of the complaint. First, the ARP insists that the Bush-
4 Cheney '04 campaign had ceased all activity in Arizona at the time of the calls, and that the
5 decision to engage in this activity was completely independent, with no coordination with
6 President Bush, any agent for President Bush, or Bush-Cheney '04. Second, the ARP contends
7 that disbursements for the communication were from the ARP's Federal Victory Account and
8 reported in its December 2004 Post-General Election Report. The ARP does not address the
9 alleged independent expenditure reporting violations. Respondents request that the Federal
10 Election Commission ("the Commission") dismiss the complaint.

11 Based on available information, the Commission has determined that the funding for the
12 telephone calls was an independent expenditure by the ARP on behalf of Bush-Cheney '04. The
13 ARP failed to report the disbursements for the telephone calls as an independent expenditure as
14 required by the Act.

15 Therefore, for the reasons set forth below, the Commission finds reason to believe that
16 the Arizona Republican Party and Kirk Adams, in his official capacity as treasurer, violated 2
17 U.S.C. § 434(b)(4)(H)(iii) and 2 U.S.C. § 434(g)(1)(A) by failing to properly report an
18 independent expenditure.

19 II. FACTUAL AND LEGAL ANALYSIS

20 A. Disbursement for Telephone Calls

21 Respondents claim that disbursements for the telephone calls were reported on the Post-
22 General Election Report. The Post-General Election Report indicates that the ARP paid FLS-

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1 DCI, LLC of St. Paul, MN, \$13,613.55 for “party telemarketing” on October 21, 2004,
2 \$14,025.76 for “absentee ballot chas” [sic] on October 27, 2004, and \$13,987.32 for “absentee
3 ballot chas” [sic] on November 10, 2004, for a total of \$41,626.63. These appear to be the
4 disbursements to which the response refers.

5 **B. Independent Expenditure**

6 The Commission has determined that the funding for the telephone calls is an
7 independent expenditure by the ARP on behalf of Bush-Cheney ‘04. An independent
8 expenditure is for a communication “expressly advocating the election or defeat of a clearly
9 identified candidate.” 2 U.S.C. § 431(17)(A). Further, the communication is not made in
10 cooperation or consultation with the candidate. 2 U.S.C. § 431(17)(B). “Clearly identified”
11 means that the name or image of the candidate is included in the communication, or that the
12 identity of the candidate is apparent by unambiguous inferences drawn from the communication.
13 2 U.S.C. § 431(18).

14 Here, the communication clearly identifies President Bush and expressly advocates for
15 his re-election. The message specifically requests that recipients of the calls return absentee
16 ballots to assure that President Bush is re-elected. However, the independent expenditure was
17 not reported according to the requirements of the Act.

18 **C. Reporting Requirements for Independent Expenditures**

19 The Act requires that independent expenditures by a political committee on behalf of a
20 Federal candidate be reported. As discussed below, the ARP did not comply with these reporting
21 requirements.
22

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1. Schedule E

A political committee must report independent expenditures that exceed \$200, or one which when added to previous independent expenditures on behalf of the same candidate aggregates over \$200, during the calendar year. 2 U.S.C. § 434(b)(4)(H)(iii). The committee is to report the expenditure on Schedule E of FEC Form 3X at the end of the first reporting period following the expenditure. 11 C.F.R. §§ 104.3(b)(3)(vii), 104.4(a). To comply with this requirement, the Post-General Election Report filed by the ARP should have included a Schedule E itemizing the independent expenditure on behalf of President Bush. The Post-General Election Report did not include a Schedule E, in violation of 2 U.S.C. § 434(b)(4)(H)(iii).

2. Twenty-four Hour Notice

Any independent expenditure of \$1,000 or more, or independent expenditures aggregating \$1,000 or more, contracted or made after the twentieth day, but more than twenty-four hours, before the day of an election must be reported within twenty-four hours after the expenditure is made. 2 U.S.C. § 434(g)(1)(A); 11 C.F.R. §§ 104.4(b)(1), 109.10(d). The report must contain the same information that would be required on Schedule E. *See* 11 C.F.R. § 104.3(b). To comply with this requirement, the expenditure should have been reported within twenty-four hours. The ARP did not report this expenditure within twenty-four hours, in violation of 2 U.S.C. § 434(g)(1)(A).

D. Allocation

Section 106.8 of the Commission's regulations applies to the costs of any phone bank communication conducted by a national, State, district, or local committee or organization of a political party if the communication: (1) refers to a clearly identified Federal candidate; (2) does

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1 not refer to any other clearly identified Federal or non-Federal candidate; (3) includes another
2 reference that generically refers to other candidates of the Federal candidate's party without
3 clearly identifying them; (4) does not solicit a contribution, a donation, or any other funds from
4 any person; and (5) does not qualify as exempt activity under the specific exceptions for the
5 definitions of contribution and expenditure for voter registrations and get-out-the-vote drives
6 conducted on behalf of the party's Presidential and Vice Presidential nominee, as set forth at
7 11 C.F.R. §§ 100.89, 100.149, and 106.8(a).

8 It appears that the ARP utilized a phone bank as defined by 11 C.F.R. § 100.28 (more
9 than 500 telephone calls of an identical or substantially similar nature within any 30-day period).
10 The telephone calls clearly identify President Bush. The communication transmitted by the ARP
11 does not solicit a contribution, donation or any other funds, and does not refer to any other
12 clearly identified Federal or non-Federal candidate. It does generically refer to other candidates
13 of President Bush's party (the Republican Party) when it calls for the election of "our Republican
14 team." Finally, the telephone calls do not qualify as "exempt activity" under the exemptions of
15 11 C.F.R. §§ 100.89 and 100.149. Accordingly, the entire cost of the calls must have been paid
16 with Federal funds and fifty percent of the cost is attributable to Bush-Cheney '04 as an
17 independent expenditure. 11 C.F.R. § 106.8(b). The remaining fifty percent is not attributable to
18 any specific Federal candidate. *Id.*

19 There is no available information suggesting that the ARP utilized non-Federal funds to
20 pay for the communication. Schedule B of the Post-General Election Report confirms the
21 disbursements from Federal funds, and there is no corresponding Schedule H, which is required
22 if the disbursements are allocated between Federal and non-Federal funds.

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